BUREAU OF LAND MANAGEMENT
FREQUENTLY ASKED QUESTIONS

Regarding the History of Public Domain Land in the Red River Area, Land Use Planning, and Management Authorities

May 2014

HISTORY OF THE PUBLIC DOMAIN IN THE RED RIVER AREA

1. I have heard land in the Red River area between Oklahoma and Texas referred to as "the public domain." What is the public domain?

"Public domain" lands include lands ceded to the Federal Government by the original States and such other lands as were later acquired from sovereigns by treaty, purchase or cession. "Public lands," by contrast, include any land or interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, or Eskimos.

2. Why is some land in the Red River area public domain?

Federal land in the Red River area from the 98th meridian west to the north fork of the Red River is classified as public domain because it was part of the Louisiana Purchase from France. These lands have never been patented or disposed of by the Federal Government since they were acquired by treaty in 1803.

3. How does the Bureau of Land Management know these lands are still under Federal ownership?

A portion of the land in the Red River area is still under Federal ownership because it has never been disposed of under authority of Congress. A series of treaties – in 1819, 1828, and 1838 - all set the south bank of the Red River as the southern border of the United States. In 1867, when a portion of this public domain was reserved for the Kiowa-Comanche-Apache (KCA) Reservation, the "middle of the main channel of the river" was established as the reservation's southern boundary, between the 98th meridian and the north fork of the Red River. The remaining land between what is now commonly called "the medial line" and the south bank of the river retained its status as public domain land and that status continues to this day.

In a series of decisions in the 1920s, the U.S. Supreme Court established that "the south bank is the water-washed and relatively permanent elevation or acclivity, commonly called a cut bank" (March 12, 1923 partial decree, *Oklahoma v. Texas*). The Court also accepted the gradient boundary method for determining the boundary when there is no well-defined cut bank (June 9, 1924 Opinion on *Oklahoma v. Texas*). This method was explained by the Court-approved surveyors Arthur Kidder and Arthur Stiles as follows: "The boundary line is a gradient of the flowing water in the river. It is located midway between the lower level of the flowing water

that just reaches the cut bank, and the higher level of it that just does not overtop the cut bank. The physical top of the cut bank being very uneven in profile, cannot be a datum for locating the boundary line; but a gradient along the bank must be used for that purpose." This terminology – medial line, cut bank, and gradient boundary – has been the basis for determining the location of public domain lands along the Red River since the Supreme Court rulings of the 1920s.

4. Along the Red River, where is the boundary between Oklahoma and Texas?

Supreme Court and other judicial decisions from the 1920s up until Congressional consent to the Red River Boundary Compact established the boundary between Texas and Oklahoma as the gradient line along the south bank of the Red River. Congressional consent to the Compact in 2000 established the boundary between the two states as the vegetation line on the south bank of the Red River.

5. How did the Red River Boundary Compact affect public land ownership?

The Red River Boundary Compact did not change the United States' existing interests in any public domain lands along the Red River. According to the terms of Article VII, the Compact "does not change: (1) the title of any person or entity, public or private, to any of the lands adjacent to the Red River; (2) the rights, including riparian rights, of any person or entity, public or private, that exist as a result of the person's or entity's title to lands adjacent to the Red River; or (3) the boundaries of those lands." Therefore, any shifts in the boundary between Texas and Oklahoma as a result of the Compact may mean that the United States now owns public lands within Texas that were formerly in Oklahoma.

6. How did the 1994 Oklahoma Resource Management Plan determine that up to 90,000 acres of public land could be found along the Red River?

The 1994 BLM Oklahoma Resource Management Plan was being finalized in the early stages of the Boundary Commission's work. A number of scenarios were contemplated. 90,000 acres would have been an approximate estimate of the broadest possible management area, including the public land lying between the medial line and the south bank of the river, and any American Indian trust properties lying on the north side of the river. The RMP also described that up to 46,000 acres of public domain fell within the planning area. This lower acreage figure is a much closer approximation of the actual federal public domain acreage in the river area that may now lie in both the States of Oklahoma and Texas.

7. How has the Red River area been managed by the Federal Government to date?

The earliest surveys of the area were performed by the General Land Office in the 1870s, to identify Tribal interests of the Kiowa, Comanche, and Apache Tribes. Federal oil and gas management has occurred on the Red River since the 1920s, and in fact oil and gas potential was the basis for the legal dispute between the States of Oklahoma and Texas that was ultimately resolved by the U.S. Supreme Court. Within the Department of the Interior mineral management functions were assumed by the BLM in the early 1980s. Since that time, BLM's primary roles in the Red River area have been oil and gas management and livestock grazing on public land

allotments in Oklahoma. The public lands in this corridor possess significant riparian and wildlife resource values, and hunting and fishing under State law is common. BLM has been in discussions with the State of Oklahoma about initiating a cleanup program of relic oilfield equipment, especially in the area north of Burkburnett, TX. The area of public land south of Waurika, OK adjacent to SR 79 currently receives extensive recreational use. Other than posting of signs, BLM does not have an active day-to-day management presence in that part of the river.

LAND USE PLANNING

1. What is the Bureau of Land Management's authority for land use planning?

The BLM's organic act, the Federal Land Policy and Management Act ("FLPMA"), Section 202, says that "the Secretary shall, with public involvement…develop, maintain, and when appropriate, revise land use plans."

The BLM land use planning process is integral to implementing all of its on-the-ground management activities. The process complies with the National Environmental Policy Act ("NEPA"), FLPMA, and other laws and ensures public involvement and involvement with our cooperating agencies.

2. What are land tenure decisions?

Land tenure decisions are those that identify lands for retention, proposed disposal, or acquisition. Land tenure decisions must achieve the goals, standards, and objectives outlined in the land use plan.

3. What is the land use planning policy guidance on retention or disposal of public lands?

Under Section 102 (a)(1) of FLPMA, it is policy that public lands be retained in Federal ownership unless as a result of the land use planning procedure it is determined that disposal of a particular parcel will serve the national interest. This determination is made through the land use planning process, during which lands and resources are systematically inventoried and their management coordinated with Federal and State planning efforts.

Public domain lands along the Red River have been identified for retention under the Act of June 22, 1948, where lands are deemed "not subject to disposition, settlement, or occupation until after the same have been classified and open to entry, and other disposal by the Secretary of the Interior according to law." This in essence means that until identified, through land use planning, for disposal, the lands are to be retained in Federal ownership.

4. What are the general criteria for classifying lands for retention or disposal?

The general criteria are set forth at 43 CFR Subpart 2410. Classifications will consider, among other factors, the relative values of the various resources in particular areas, e.g., grazing, recreation, minerals, and disposal.

Consideration is given to whether the lands can be classified for either retention for multiple use management or for disposal. Using the criteria at 43 CFR 2410.2, the tract would be classified in a manner which best promotes the public interests.

If the lands are found to be suitable for disposal, consideration is given to whether the lands are needed for urban or suburban purposes or whether they are chiefly valuable for other purposes.

5. What mechanisms can BLM use to dispose of lands identified through land use planning?

The BLM can dispose of identified lands through multiple mechanisms under FLPMA.

- **Section 203, Sales**
- **Section 206, Exchanges**
- **Section 212, Recreation and Public Purposes Act**

6. What criteria apply to land disposal by sale?

Under Section 203 of FLPMA, the BLM may offer for sale public lands if, through the planning process under Section 202, 1) the public land has been determined to be difficult and uneconomic to manage and is not suitable for management by another Federal department or agency; 2) the land was acquired for a specific purpose but is no longer required for that or any other Federal purpose; or 3) disposal will serve important public objectives which cannot be achieved prudently on land other than public land and which outweigh other public objectives and values.

Under Section 203(f) sales may either be by a competitive bidding process, a modified competitive bidding process, or a non-competitive process, but the price may not be less than fair market value.

Under Section 209 of FLPMA, the Secretary of the Interior may not convey mineral estate, except for land exchanges under Section 206 and except to a prospective surface owner if it is found that there are no known mineral values in the land or that the reservation of the mineral rights in the United States is interfering with or precluding appropriate non-mineral development of the land and such development is a more beneficial use of the land than mineral development.

MANAGEMENT AUTHORITIES OF THE BLM

1. Under what authority does the Bureau of Land Management manage public domain and public lands in the Red River area?

Public domain and public lands are managed by the BLM under two different Acts, the Act of June 22, 1948, and the Federal Land Policy and Management Act (FLPMA). As noted above, it is the policy of the United States that public lands be retained in Federal ownership unless as a result of the land use planning procedure, it is determined that disposal of a particular parcel will serve the national interest.

2. What did the Act of June 22, 1948 do?

The Act of June 22, 1948, extended the public-land laws of the United States to the public lands in a particular part of the Red River, provided that such lands shall not be subject to disposition, settlement, or occupation until after the same have been classified and opened to entry, and other disposal by the Secretary of the Interior according to law.

3. Did BLM's organic act, the Federal Land Policy and Management Act of 1976 (FLPMA) change or repeal the authority under the Act of June 22, 1948?

FLPMA did not change or repeal the authorities under the Act of June 22, 1948.

4. Where are BLM authorities for land exchanges?

Sections 205, 206 and 207 of FLPMA provide legal authority for the Secretary of the Interior to conduct land exchanges.

5. What are the requirements for land exchanges?

- Land exchanges must be consistent with the mission of the agency and its land use plans (Section 205);
- A determination has been made that the public interest will be well served (Section 206);
- The lands to be exchanged must be in the same state (Section 206);
- The lands to be exchanged must be equal in value or be able to be equalized by payment of cash absent special circumstances (Section 206);
- The land exchange proponent must be a citizen of the United States or a corporation subject to the laws of a State or the United States (Section 207);
- The lands acquired by exchange which are within the boundaries of any unit of the National Forest System, National Park System, National Wildlife Refuge System… or any other system established by Act of Congress… become a part of the unit or area within which they are located, without further action by the Secretary (Section 206).

6. Under what conditions may BLM grant a right-of-way (ROW)?

BLM's ROW authorities are set forth at Title V of FLPMA, 43 U.S.C. 1762 et seq. and the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 185.

Section 501 of FLPMA, 43 U.S.C. 1761, authorizes the Secretary to grant, issue, or renew ROWs over, upon, or through the public lands for roads, highways, and such other necessary transportation or other systems or facilities which are in the public interest and which require ROWs over, upon, under or through such lands. Section 28 of the Mineral Leasing Act, 30 U.S.C.185, authorizes the Secretary to grant rights-of-way for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.

7. What is the objective of the BLM's ROW program?

43 CFR 2801.2 -- It is the BLM's objective to grant ROWs to any qualified individual, business, or government entity and to direct and control the use of ROWs on public lands in a manner that:

1) Protects the natural resources associated with public lands and adjacent lands, whether private or administered by a government entity;
2) Prevents unnecessary and undue degradation to public lands;
3) Promotes the use of ROWs in common considering engineering and technological compatibility, national security, and land use plans; and
4) Coordinates, to the fullest extent possible, all BLM actions with state and local governments, interested individuals, and appropriate quasi-public entities.

8. What is the Recreation and Public Purposes Act?

The Act of June 14, 1926, as amended, commonly known as the Recreation and Public Purposes Act (R&PP), authorizes the sale or lease of public lands for recreational or public purposes to State and local governments and to qualified nonprofit organizations. Examples of typical uses under the act are historic monument sites, campgrounds, schools, firehouses, law enforcement facilities, municipal facilities, landfills, hospitals, parks, and fairgrounds.

Regulation 43 CFR 2740.0-6 provides that BLM may require public lands first be leased for a period of time prior to issuance of a patent, except for conveyances for the purpose of solid waste disposal or for any other purpose that may include the disposal, placement, or release of any hazardous substance.

The objectives of the Act are to meet the needs of certain State and local governmental agencies and other qualified organizations for public lands required for recreational and public purposes.

9. What lands are covered by the R&PP Act?

The act applies to all Federal public lands, except lands within national forests, national parks and monuments, national wildlife refuges, Indian lands, and acquired lands.

10. What patent provisions are required under the R&PP Act?

The amount of land an applicant may purchase is set by law. Whether the land is to be purchased or leased, the BLM will classify for purposes of the act only the amount of lands required for efficient operation of the projects described in an applicant's development plan.

Any State, State agency having jurisdiction over the State park system, or political subdivision of a state may purchase for recreation purposes up to 6,400 acres annually, and as many small roadside parks and rest sites, up to 10 acres each, as may be needed. In addition, any State or State agency or political subdivision of a state may acquire 640 acres annually for each public purpose program other than recreation.

Nonprofit organizations may purchase up to 640 acres a year for recreation purposes, and an additional 640 acres for other public purposes.

Patents must contain a reversion clause that returns title to the United States if the tract has been devoted to a use other than that for which the lands were conveyed, among other reasons. All patents issued contain a reservation of all mineral deposits and provisions regarding nondiscrimination.

11. What does the Color of Title Act provide?

The Color of Title Act, 43 U.S.C. §§ 1068, states, "The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, or (b) may, in his discretion, whenever it shall be shown… that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant … under claim or color-of-title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by the State and local Governmental units, issue a patent for not to exceed 160 acres of such land upon payment of not less than $1.25 per acre."

Guidance for implementing the Color of Title Act is found in the regulations at 43 CFR Part 2540, Interior Board Land Appeal (IBLA) decisions, and court decisions.

12. What is the Color of Title Act time requirement and maximum acreage?

The claimant must hold land in good faith adverse possession for at least 20 years. The maximum acreage is 160 acres; there is no minimum acreage. A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in

peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

13. What are the two classes of color-of-title claims set by regulation?

Class I requires that valuable improvements have been placed on the land or that some part of the land has been reduced to cultivation.

Class II requires that the claimant must have paid taxes levied on the land by state and local government units commencing not later than 1901 to the present time.

The obligation to establish a valid color of title claim is upon the claimant.